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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

JANINE CHANDLER, et al.,

Plaintiffs,

v.

CALIFORNIA DEP'T OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PROPOSED INTERVENORS' MOTION
TO INTERVENE**

Hearing Date: June 13, 2022
Time: 9:00am
Judge: Hon. Jennifer L. Thurston
Courtroom: 4, 7th Floor

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1 **I. INTRODUCTION**

2 Kelli Blackwell, Katie Brown, Tremayne Carroll, and Jennifer Rose are transgender
3 women who have variously been harassed, severely beaten, and sexually assaulted—not only by
4 the men they have been incarcerated with in California prisons, but also by employees of the
5 California Department of Corrections and Rehabilitation (“CDCR”). That same agency is tasked
6 in this case with defending the rights of these women, and others like them, to be housed in
7 women’s carceral facilities—a right that CDCR, ignoring its legal obligations, has granted to only
8 two of the four. These women, along with the advocacy group Transgender, Gender-Variant and
9 Intersex Justice Project (“TGIJP”), are entitled to have their voices heard in this litigation to
10 preserve their rights and the protections afforded under California law.

11 Ms. Blackwell, Ms. Brown, Ms. Carroll, and Ms. Rose (the “Proposed Individual
12 Intervenors”) have spent a combined 88 years incarcerated in California prisons designated for
13 men. *Infra* at 5–7. Ms. Rose and Ms. Brown remain in men’s prisons today. *Id.* All four women
14 have faced ceaseless harassment and violence because they are transgender, both from other
15 incarcerated people and from the state employees charged with their protection. Ms. Carroll, now
16 housed at a women’s facility, endured *more than 30* incidents of sexual violence—including at
17 least two at the hands of CDCR staff—while housed in men’s facilities. And her story is the rule,
18 not the exception: A statewide study found that transgender women who were automatically
19 housed with men in California prisons were *13 times* more likely to be sexually assaulted than
20 men in the same facilities.¹ And as the California Legislature found, 40% of incarcerated
21 transgender women reported being harassed by other inmates, and 38% reported being harassed
22 by CDCR staff. 2020 Cal. Legis. Serv. ch. 182, § 2(g), (h).

23 Faced with those sobering statistics, California lawmakers in 2020 enacted Senate Bill No.
24 132, also known as the Transgender Respect, Agency, and Dignity Act (“SB 132”). Among other
25 things, SB 132 requires CDCR to house each transgender, gender non-conforming, or intersex
26 (“TGI”) person at a facility designated for either men or for women, based on the person’s own

27 _____
28 ¹ Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, Ctr. for Evidence-Based Corr. (Apr. 26, 2007).

1 stated preference and perception of what placement would be safest. Now, Plaintiffs seek to
 2 invalidate SB 132 and lodge a number of constitutional challenges that threaten to undo the law's
 3 vital protections for incarcerated TGI people, including the Proposed Individual Intervenors.

4 The Defendants in this case—CDCR and CDCR officials sued in their official
 5 capacities—are not likely to defend SB 132 vigorously because it is a law that they not only
 6 refuse to fully implement, but regularly violate. Although SB 132 requires CDCR to act on a TGI
 7 person's housing preference unless the agency can articulate specific management or security
 8 concerns about the requested placement, CDCR has failed even to acknowledge, much less act
 9 on, most of those requests. Since SB 132 took effect on January 1, 2021, at least 321 TGI people
 10 have requested transfers, but CDCR has failed to respond to the vast majority of those requests,
 11 granting just 46 and failing to actually transfer people even after approving their requests. TGIJP
 12 Decl. ¶ 19. By refusing to implement SB 132, CDCR has shown that its interests diverge from
 13 those of the incarcerated TGI people the law seeks to protect and that it cannot adequately
 14 represent their interests.

15 TGIJP, Ms. Blackwell, Ms. Brown, Ms. Carroll, and Ms. Rose, (collectively, the
 16 "Proposed Intervenors") respectfully seek to intervene in this action as party defendants under
 17 Federal Rule of Civil Procedure 24(a) or, in the alternative, Rule 24(b), to defend the
 18 constitutionality of SB 132. TGIJP is a nonprofit organization that works on behalf of
 19 incarcerated and formerly incarcerated TGI people in California to address housing and safety
 20 concerns, among others, at both the individual and statewide levels. *See infra* at 5. TGIJP was
 21 one of the sponsoring groups that helped draft SB 132 and secure its passage. *Id.* It represents
 22 the interests of many TGI people incarcerated in CDCR facilities, and its members—transgender,
 23 gender-variant, and intersex people inside and outside of detention facilities—directly benefit
 24 from SB 132's protections. *Id.*

25 Ms. Blackwell, Ms. Brown, Ms. Carroll, and Ms. Rose are transgender women who are
 26 incarcerated in CDCR facilities. *See infra* at 5–7. In 2021, Ms. Blackwell and Ms. Carroll were
 27 transferred from men's facilities to Central California Women's Facility ("CCWF"). *See infra* at
 28 6–7. Ms. Brown and Ms. Rose are housed at Salinas Valley State Prison ("SVSP"), a men's

1 facility, and have requested to be transferred to women’s facilities under SB 132. *See infra* at 5–
 2 7. The Proposed Intervenor have direct interests in defeating Plaintiffs’ challenge to SB 132,
 3 and the Court’s resolution of that challenge will directly affect the Proposed Individual
 4 Intervenor’s personal safety and their protected rights. For these reasons and those more fully
 5 explained herein, the Court should permit the Proposed Intervenor to intervene in this action.

6 **II. FACTUAL BACKGROUND**

7 **A. California Lawmakers Passed SB 132 to Protect Incarcerated TGI People**

8 California’s SB 132 protects incarcerated TGI people by requiring CDCR to house them
 9 in gender-appropriate facilities if that is their request. State Senator Scott Wiener authored SB
 10 132, and a broad coalition of advocates—including co-sponsors TGIJP, TransLatin@ Coalition,
 11 Transgender Law Center, Equality California, Lambda Legal, and the ACLUs of California—
 12 supported it throughout the legislative process. While drafting the statute, the co-sponsors and
 13 Senator Wiener’s office gathered feedback from incarcerated TGI people to ensure that the statute
 14 would promote their safety and dignity. TGIJP Decl. ¶ 17. The co-sponsors and author took
 15 other factors into account, including:

- 16 • the federal Prison Rape Elimination Act (“PREA”) and its implementing regulations,
 17 which already required carceral agencies to consider a TGI person’s own views about
 18 what housing placement and search protocol would be safest for them;
- 19 • the experiences of carceral agencies in Connecticut, Massachusetts, and other
 20 jurisdictions that have adopted laws, policies, or regulations for housing TGI people in
 21 facilities consistent with their gender identity; and
- 22 • the existing framework of constitutional and statutory law protecting the rights of TGI
 23 people in prisons and other settings in California.

24 *Id.* Both houses of the Legislature voted to pass SB 132, and Governor Gavin Newsom signed it
 25 into law on September 26, 2020.

26 SB 132 added two sections to the California Penal Code, both of which were designed to
 27 protect the physical safety and personal dignity of incarcerated TGI people. The first, Section
 28 2605, requires CDCR to ask each person entering its custody their gender identity, pronoun (e.g.,

“he,” “she,” or “they”), and honorific (e.g., “Mr.,” “Ms.”), and to respect and use each person’s specified pronoun and honorific. Cal. Penal Code § 2605. The second, Section 2606, requires CDCR to house each TGI person in a facility designated for either men or women, based on the person’s preference and perception of personal safety. *Id.* § 2606. Section 2606 also requires that CDCR inquire about and honor TGI people’s preferences as to the gender of staff who may search them. *Id.* SB 132 explicitly states that if CDCR declines to follow a person’s housing or search preference, it can do so based only on articulable, non-discriminatory “management or security concerns,” and it must provide the requesting person with a written explanation of its reasons for any denial. *Id.*

B. Plaintiffs Challenge SB 132 on Constitutional Grounds by Misrepresenting Gender Identity Issues

Janine Chandler, Krystal Gonzalez, Tomiekia Johnson, Nadia Romero, and the organization Woman II Woman (collectively, “Plaintiffs”) challenge SB 132 on various federal and state constitutional grounds. Plaintiffs seek, among other things, a declaration that SB 132 is unconstitutional, on its face and as applied, under both the California and U.S. Constitutions.

Plaintiffs intentionally misrepresent gender identity terminology and reject concepts accepted by the Ninth Circuit Court of Appeals and the U.S. Supreme Court. For example, the complaint refers to “female prisoner[s] without any gender identity,” Compl. ¶ 4(f). But the Ninth Circuit has recognized that *everyone* has a gender identity—for those who are cisgender, that gender identity simply matches their sex assigned at birth. *See, e.g., Karnoski v. Trump*, 926 F.3d 1180, 1187 n.1 (9th Cir. 2019) (citing Br. of Amici Curiae American Medical Association et al.). The complaint also refers to “men who claim a ‘gender identity of female.’” Compl. ¶ 8. This allegation is offensive and attempts to paint transgender women as “men,” contrary to the judicial consensus that such language is improper. *See, e.g., Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) (referring to Respondent Aimee Stephens, a transgender woman, as “Ms. Stephens,” and “she”); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 771–72 (9th Cir. 2019) (referring to Plaintiff-Appellee Andree Edmo, an incarcerated transgender woman, as “a transgender woman” and “she”).

1 **C. The Proposed Intervenor Helped to Draft SB 132 and Would Suffer If It**
 2 **Were Invalidated**

3 **TGIJP.** TGIJP is a San Francisco-based nonprofit organization that works with and
 4 advocates for incarcerated and formerly incarcerated TGI people. TGIJP Decl. ¶ 3. It offers a
 5 wide range of services to its members—from fighting to address individual housing and safety
 6 concerns to designing policy initiatives—and has long advocated for appropriate housing for
 7 incarcerated TGI people in California. *Id.* ¶ 5. TGIJP also gathers and shares information about
 8 the experiences of incarcerated TGI people, through visits and other communication with its
 9 incarcerated members. *Id.* ¶ 14. TGIJP played a leading role in shaping and advocating for the
 10 passage of SB 132, a vital law that protects the rights, mental health, and physical safety of
 11 TGIJP’s members and that grew, in part, from the vision of TGIJP leader Miss Janetta Johnson.
 12 *Id.* ¶¶ 10,16. The organization formally sponsored SB 132 during the legislative process. *Id.*
 13 ¶ 16.

14 **Katie Brown.** Ms. Brown is a 37-year-old Black transgender woman who has been
 15 incarcerated in CDCR facilities since May 2017. Brown Decl. ¶¶ 2, 6. She is currently housed at
 16 SVSP, a facility designated for men. *Id.* ¶ 5. Ms. Brown does not feel safe in men’s prisons. *Id.*
 17 ¶ 10. At SVSP, because she is a transgender woman, she faces routine harassment from
 18 incarcerated men and CDCR staff, including taunts and requests for sexual favors. *Id.* ¶¶ 10–11.
 19 Staff members consistently and purposefully misgender her—calling her “him,” “boy,” and
 20 “Mr. Brown”—and at least one staff member frequently singles out Ms. Brown and other
 21 transgender women for unjustified disciplinary action. *Id.* ¶¶ 11–12.

22 On or about January 3, 2021, Ms. Brown formally requested to be transferred to a
 23 women’s facility under SB 132. *Id.* ¶ 14. CDCR staff told her that she would first have to
 24 complete a class entitled “Right Person, Right Prison,” after which the Institutional Classification
 25 Committee (“ICC”) would hold a hearing on her transfer request. *Id.* ¶ 15. Ms. Brown
 26 completed the class in November 2021 and immediately requested an ICC hearing. *Id.* ¶ 16. A
 27 hearing was scheduled, but SVSP staff prevented Ms. Brown from attending: The correctional
 28 officer assigned to take Ms. Brown to the hearing refused to do so because he did not accept that

1 she is a transgender woman. *Id.* Ms. Brown has not yet had an ICC hearing and is still awaiting
 2 transfer to a women's facility. *Id.* ¶ 17. CDCR has not given Ms. Brown any reason for its
 3 extended delay in acting on her transfer request. *Id.* ¶ 18.

4 ***Kelli Blackwell.*** Ms. Blackwell is a 55-year-old Black transgender woman who has been
 5 incarcerated in CDCR facilities since 1990. Blackwell Decl. ¶¶ 2, 6. Before her April 2021
 6 transfer to a facility designated for women, Ms. Blackwell survived multiple instances of serious
 7 physical violence because she is transgender. *Id.* ¶¶ 5, 17. In 2001, while housed in a men's
 8 facility known as New Folsom, Ms. Blackwell was attacked by multiple other incarcerated people
 9 who broke bones in her jaw and neck. *Id.* ¶ 17. And in 2008, while housed at SVSP,
 10 Ms. Blackwell was attacked by another incarcerated person and lost eight teeth. *Id.* When
 11 housed with men, Ms. Blackwell worried constantly about her safety. *Id.* ¶ 19.

12 A longtime advocate for transgender and LGBTQ communities, Ms. Blackwell was aware
 13 of SB 132 before it became law and requested a transfer to a women's facility in January 2021,
 14 immediately after SB 132 took effect. *Id.* ¶¶ 7–10. While her transfer request was pending,
 15 CDCR staff discouraged Ms. Blackwell from transferring to a women's facility. *Id.* ¶ 14. In
 16 early April 2021, Ms. Blackwell was transferred to CCWF. *Id.* ¶¶ 5, 12. While Ms. Blackwell
 17 has had mostly positive experiences with the incarcerated women at CCWF, she has not felt
 18 welcomed by the CDCR staff there, who she believes mete out disproportionate discipline to
 19 transgender women and try to create conflict between the cisgender and transgender incarcerated
 20 populations. *Id.* ¶¶ 21–24. The CCWF warden, a defendant in this case, has also personally
 21 threatened to send Ms. Blackwell back to a men's facility against her will. *Id.* ¶ 22. Still,
 22 Ms. Blackwell feels physically safer at CCWF. *Id.* ¶ 20. She fears that if Plaintiffs' lawsuit
 23 succeeds, she will be sent back to a men's facility, where she will again be subject to severe
 24 harassment and violence. *Id.* ¶ 26.

25 ***Tremayne Carroll.*** Ms. Carroll is a 49-year-old Black transgender woman who has been
 26 incarcerated in CDCR facilities since 1999. Carroll Decl. ¶¶ 2, 4. She was transferred to a
 27 women's facility in August 2021. *Id.* ¶ 6. While in men's facilities, she was sexually assaulted at
 28 least 30 times—at least twice by CDCR staff. *Id.* ¶¶ 7, 9. She filed multiple PREA complaints

1 about these incidents. *Id.* ¶¶ 7, 9, 11. In 2019 at Richard J. Donovan Correctional Facility
 2 (“RJD”), Ms. Carroll was placed in solitary confinement because she was concerned that she
 3 could not be housed safely anywhere else in that facility. *Id.* ¶¶ 9–10. CDCR staff at RJD then
 4 intentionally left Ms. Carroll unattended in solitary confinement—in her wheelchair, with her
 5 hands handcuffed behind her back—for more than 48 hours. *Id.* ¶ 11. CDCR staff members were
 6 required to check on Ms. Carroll every 30 minutes but refused to do so. *Id.* ¶ 12. And in
 7 response to Ms. Carroll’s repeated pleas for help over those two days, CDCR staff either ignored
 8 her, told her they did not “want to get involved,” or told her that she should not file PREA
 9 reports. *Id.* Ms. Carroll understood this treatment to be in retaliation for PREA complaints she
 10 had filed against staff at RJD. *Id.* ¶ 11. In another incident, CDCR staff members stomped on
 11 Ms. Carroll’s ankles and wrists while she was unconscious. *Id.* ¶ 15.

12 Eventually, Ms. Carroll was transferred to Mule Creek State Prison, another men’s
 13 facility, for her safety in July 2020. *Id.* ¶ 18. Her treatment there was little better. *Id.* In August
 14 2021, Ms. Carroll finally transferred to CCWF. *Id.* ¶ 20.

15 ***Jennifer Rose.*** Ms. Rose is a 52-year-old transgender woman who has been incarcerated
 16 in CDCR facilities since 1991. Rose Decl. ¶¶ 2, 5. She is currently housed at SVSP, a men’s
 17 facility. *Id.* ¶ 4. Ms. Rose does not feel safe in men’s prisons. *Id.* ¶¶ 8–9. While incarcerated in
 18 men’s facilities, Ms. Rose has been sexually assaulted twice, including one incident in which
 19 CDCR staff members placed her in a cell with a man with a known history of inflicting sexual
 20 violence on others. *Id.* ¶¶ 10–11. Ms. Rose has also been physically assaulted, including by
 21 CDCR staff members. *Id.* ¶¶ 9, 12. Ms. Rose is also aware of several transgender women who
 22 were murdered while incarcerated in men’s facilities. *Id.* ¶ 19.

23 Ms. Rose has advocated for CDCR to comply with SB 132 and believes that CDCR staff
 24 members have targeted her because of those efforts. *Id.* ¶ 15. Within two days of SB 132 taking
 25 effect, Ms. Brown requested to be transferred to a women’s facility. *Id.* ¶ 17. Now, over 15
 26 months later, she remains housed in a men’s facility and has received no formal response to her
 27 transfer request. *Id.* Ms. Brown also expressed her search preference, but CDCR staff have not
 28 consistently respected that preference as SB 132 requires. *Id.* ¶ 18.

D. Positions of Other Parties on Intervention

Counsel for the Proposed Intervenors met and conferred with counsel for Plaintiffs on April 15, 2022, and they do not oppose this motion. Meerkamper Decl. ¶ 6. Counsel met and conferred with counsel for Defendants on April 29, 2022; Defendants declined to take a position on this motion. *Id.* at ¶ 14. Proposed Intervenors’ meet-and-confer efforts are further described in the attached Declaration of Shawn Thomas Meerkamper.

III. ARGUMENT

Allowing the Proposed Intervenors to become parties to this case is the only way for the Court to ensure that those who have the most at stake in this litigation—the TGI people whose safety and dignity SB 132 seeks to protect—are fully represented. And it is the Court’s best opportunity to understand fully the perspectives of incarcerated TGI people in deciding questions that are matters of life and death for them.

Federal Rule of Civil Procedure 24 allows a nonparty to intervene in and become a party to a lawsuit and is the only procedural mechanism available to a nonparty wishing to join a lawsuit. *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 933 (2009). When a party intervenes, it takes on all of the rights and responsibilities that the original parties have. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1378 (9th Cir. 1997). Guided by equity and pragmatism, courts liberally construe Rule 24 in favor of intervention. *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010).

A. The Proposed Intervenors Satisfy the Criteria for Intervention as of Right

The Proposed Intervenors have an undeniable interest in this action and stand to lose fundamental rights if CDCR, which has proved to be indifferent or even hostile to the interests of incarcerated TGI people, does not adequately represent their interests. Those facts demand that the Proposed Intervenors be allowed to intervene here. Federal Rule of Civil Procedure 24(a)(2) requires that courts permit a party to intervene when that party “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Courts

1 liberally construe this rule to favor intervention. *See California ex rel. Lockyer v. United States*,
 2 450 F.3d 436, 440 (9th Cir. 2006); *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th
 3 Cir. 2002). As the Ninth Circuit has explained, intervention allows courts to resolve issues more
 4 efficiently: “By allowing parties with a practical interest in the outcome of a particular case to
 5 intervene, we often prevent or simplify future litigation involving related issues; at the same time,
 6 we allow an additional interested party to express its views before the court.” *Forest*
 7 *Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995).²

8 A potential intervenor has the right to intervene if (1) they file a timely application;
 9 (2) they have a “significantly protectable” interest in the subject matter of the litigation;
 10 (3) disposition of the action may impair their ability to protect their interests; and (4) the existing
 11 parties inadequately represent the intervenors’ interests. *See Sierra Club v. EPA*, 995 F.2d 1478,
 12 1481 (9th Cir. 1993). The Proposed Intervenors satisfy each of these elements.

13 1. The Proposed Intervenors’ Motion for Intervention Is Timely

14 The Proposed Intervenors file this motion at the earliest stage of this litigation: before
 15 discovery, before a single hearing, and before Plaintiffs have responded to Defendant’s motion to
 16 dismiss. So, the motion is timely. Timeliness is “the threshold requirement” for intervention as
 17 of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). It
 18 is a flexible concept whose determination is left to the Court’s discretion. *United States v. Alisal*
 19 *Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004). In assessing timeliness, courts consider the
 20 totality of the circumstances facing would-be intervenors, with a focus on three factors: (1) the
 21 stage of the proceeding at which an applicant seeks to intervene, (2) the potential prejudice to
 22 other parties, and (3) the reason for and length of any delay in applying. *Id.* Prejudice to existing
 23 parties is “the most important consideration in deciding whether a motion for intervention is
 24 untimely.” *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

25 Here, the Proposed Intervenors’ motion is timely because it comes before any significant
 26 progress in the case and well before “a stage late in the game” at which intervention might
 27 conceivably prejudice the existing parties. *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Glaser*,

28 ² Unless otherwise noted, all internal citations and quotations are omitted.

No. 2:11-cv-02980, 2020 WL 7345673, at *2 (E.D. Cal. Oct. 13, 2020). Courts routinely permit intervention where, as here, a lawsuit is in its infancy and there can be no prejudice. *See, e.g., Kalbers v. U.S. Dep't of Just.*, 22 F.4th 816, 826 (9th Cir. 2021) (reversing district court's denial of intervention motion on timeliness grounds where motion was made nearly one year after case was filed, existing defendant had answered complaint, and court had issued a discovery order and held settlement conference). Any perceived delay in bringing this motion would be excusable because of the extensive pandemic-related barriers that the individual intervenors, who are incarcerated, faced in communicating with counsel. And the parties' stipulation to the briefing schedule related to this Motion and Defendants' pending Motion to Dismiss demonstrates the absence of any prejudice to the existing parties—this Motion will not prevent this case from proceeding apace. *See* Dkt. No. 18.

2. The Proposed Intervenors Have Significant, Protectable Interests That Will Be Impaired If the Court Denies Intervention

The Proposed Intervenors' interests here are clear and vital: they fought for the protections that SB 132 contains, their experiences demonstrate the need for those protections, and they will lose those protections if Plaintiffs succeed. "An applicant has a significant protectable interest in an action if (1) it asserts an interest that is protected under some law, and (2) there is a relationship between its legally protected interest and the plaintiff's claims." *Lockyer*, 450 F.3d at 441. "The relationship requirement is met if the resolution of the plaintiff's claims actually will affect the applicant." *City of Los Angeles*, 288 F.3d at 398. Requiring intervenors to show an "interest relating to the property or transaction" is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* at 397–98.

Once a "significant protectable interest" is shown, courts next consider whether the proposed intervenor "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest[.]" Fed. R. Civ. P. 24(a)(2). This analysis "is not limited to consequences of a strictly legal nature." *Forest Conservation Council*, 66 F.3d at 1498. Rather, courts should grant intervention if a proposed intervenor "would be substantially

1 affected in a practical sense by” the action’s outcome. *Lockyer*, 450 F.3d at 442. Once courts
 2 determine that a potential intervenor has a protectable interest, they “have little difficulty
 3 concluding that the disposition of the case may affect such interest.” *Jackson v. Abercrombie*,
 4 282 F.R.D. 507, 517 (D. Haw. 2012). Here, the outcome of this case implicates clear interests of
 5 the Proposed Intervenors.

6 ***TGIJP’s Interests.*** TGIJP played a key role in shaping and advocating for SB 132 and so
 7 has a significant protectable interest in upholding the law—an interest that could be impaired by
 8 the outcome of this litigation. The Ninth Circuit has repeatedly recognized that a “public interest
 9 group is entitled as a matter of right to intervene in an action challenging the legality of a measure
 10 it has supported.” *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995); *see*
 11 *Wash. State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982)
 12 (reversing denial of public interest group’s intervention motion in suit challenging
 13 constitutionality of statute it had sponsored). As one of the sponsors of SB 132, TGIJP has a
 14 significant protectable interest in defeating Plaintiffs’ challenge to the law.

15 Another reason TGIJP has a protectable interest in this litigation is that SB 132 was
 16 enacted to protect its members, many of whom are incarcerated TGI people. *See Cnty. of Fresno*
 17 *v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (holding that proposed intervenor organization had a
 18 protectable interest because the law at issue was enacted to benefit its members); *see also United*
 19 *States v. Carpenter*, 526 F.3d 1237, 1240 (9th Cir. 2008) (affirming order permitting intervention
 20 as of right for environmental groups whose interest in quiet-title action was derivative of their
 21 members’ interest in preserving the land). SB 132 was meant to address the dangerous and
 22 unconstitutional conditions that incarcerated TGI people, including TGIJP members, have faced:
 23 harassment, sexual assault, other forms of physical violence, misgendering, and other threats and
 24 indignities. *See supra* at 5–7. As a steward of its members’ interests, TGIJP shares their interest
 25 in ensuring that SB 132 remains in effect.

26 These protectable interests will be impaired if Plaintiffs successfully invalidate SB 132
 27 and thereby dismantle the vital protections SB 132 affords to incarcerated TGI people. *Supra* at
 28 5–7; *infra* at 12–13. Therefore, under Rule 24(a)(2), TGIJP is entitled to intervene in SB 132’s

1 defense.

2 ***Individual Intervenors’ Interests.*** The Proposed Individual Intervenors have protectable
 3 interests in this litigation because they are among those SB 132 was designed to protect. In
 4 passing SB 132, the California Legislature recognized “a very real problem facing incarcerated
 5 transgender people”: specifically, the “significant risk of violence” caused by housing them
 6 “according to their birth-assigned gender, not their gender identity or their perception of safety.”
 7 S. Comm. on Public Safety, 2019-2020 Leg., Regular Sess., at 4 (Cal. Apr. 22, 2019) (committee
 8 report prior to hearing on SB 132). The Legislature enacted SB 132 to address, among other
 9 things, the disproportionately high rates of sexual assault and harassment that TGI people face
 10 while incarcerated. *Supra* 3–4; 2020 Cal. Stats. ch. 182. “The question of whether a proposed
 11 intervenor has a significant protectable interest is a practical, threshold inquiry.” *California v.*
 12 *HHS*, 330 F.R.D. 248, 253 (N.D. Cal. 2019). Where, as here, the proposed intervenors are
 13 members of the group protected by the challenged law, courts routinely find that they have a
 14 significant protectable interest in the litigation. *See, e.g., Lockyer*, 450 F.3d at 441–42 (holding
 15 that proposed intervenor healthcare providers had protectable interest where challenged law
 16 protected their choice not to pay for abortion coverage); *see also Andrus*, 622 F.2d at 438
 17 (holding that proposed intervenor organization had protectable interest in the litigation because its
 18 members were the intended beneficiaries of the law at issue).

19 An adverse decision in this case would harm the Proposed Individual Intervenors by
 20 eliminating crucial protections that the Legislature put in place for their safety and well-being.
 21 *Supra* at 3–4. As the Legislature recognized in passing SB 132, these protections are a matter of
 22 life and death for incarcerated TGI people. *Id.* Indeed, the Proposed Individual Intervenors’
 23 personal experiences demonstrate the verbal, physical, and sexual abuse that they and other
 24 incarcerated TGI people have faced; SB 132 aims to address precisely these issues.

25 Ms. Carroll and Ms. Blackwell, who have been transferred to women’s facility CCWF
 26 since SB 132’s enactment, feared for their safety when housed at men’s facilities. *Supra* at 5–7.
 27 Before her transfer to CCWF, Ms. Blackwell survived multiple attacks by incarcerated men,
 28 including two brutal beatings that resulted in broken bones in her jaw and neck and the loss of

1 eight teeth. *Supra* at 6. While incarcerated in men’s facilities, Ms. Carroll faced repeated
 2 harassment and was sexually assaulted more than 30 times. *Supra* at 6–7. Both women sought
 3 transfers to women’s facilities, where they believed they would be safer. *Id.* And both fear that if
 4 SB 132 is overturned or its protections limited, they would be sent back to a men’s facility to
 5 once again face the violence and harassment that they believed they had escaped. *Id.*

6 Ms. Brown and Ms. Rose are awaiting transfer under SB 132, and an adverse outcome in
 7 this case would threaten their interest in obtaining safe housing, among other interests. Despite
 8 requesting transfers to a women’s facility under SB 132 many months ago, Ms. Brown and
 9 Ms. Rose remain housed at SVSP. *Supra* at 5–7. Ms. Brown and Ms. Rose have endured a range
 10 of harms that SB 132 is meant to prevent, from quotidian indignities to life-threatening attacks.
 11 Ms. Rose has been sexually assaulted twice and physically assaulted on other occasions,
 12 including by CDCR staff. *Id.* And Ms. Brown faces persistent harassment, including taunting,
 13 name-calling, and requests for sexual favors. *Id.* Those harms will continue if Plaintiffs succeed
 14 in invalidating SB 132.

15 California lawmakers enacted SB 132 to provide protections for incarcerated TGI people,
 16 in addition to existing rights, and in order to grant them a measure of safety and dignity. The
 17 routine violence and abuse that the Proposed Individual Intervenors have faced while in CDCR
 18 custody demonstrate the law’s necessity. Without SB 132’s protections, the Proposed Individual
 19 Intervenors will continue to face persistent physical, sexual, and emotional abuse.

20 **3. The Existing Parties Do Not Adequately Represent the Proposed** 21 **Intervenors’ Interests**

22 As incarcerated people who rely on SB 132 for essential protections and a group that
 23 represents their interests, the Proposed Intervenors have necessarily different, broader, and more
 24 immediate interests in defending SB 132 than Defendants—state carceral officials who are tasked
 25 with implementing those protections but who have often failed to do so. To demonstrate
 26 inadequate representation, the Proposed Intervenors need only show that their interests are
 27 sufficiently different from the existing parties’, and the Proposed Intervenors here more than meet
 28 that burden. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972);

1 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983).

2 In assessing adequacy of representation, the Ninth Circuit weighs three factors:

3 (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed
 4 intervenor's arguments; (2) whether the present party is capable and willing to make such
 5 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the
 6 proceeding that other parties would neglect. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.
 7 2003). Although the Proposed Intervenors seek to intervene on the same side as Defendants, their
 8 interests are not adequately represented for several reasons. First, Defendants have demonstrated
 9 through their failures to implement SB 132 that they are reluctant or unwilling to defend this case
 10 vigorously. Second, the Proposed Intervenors are likely to advocate for a broader interpretation
 11 of SB 132 than Defendants and are therefore likely to make arguments that Defendants will not.
 12 And third, the Proposed Intervenors are uniquely able to present the perspective of incarcerated
 13 TGI people, which the existing parties have actively ignored.

14 ***CDCR's Failure to Implement SB 132.*** CDCR cannot be expected to vigorously defend
 15 SB 132 because it has so far refused to even implement it. *See Citizens for Balanced Use v.*
 16 *Mont. Wilderness Ass'n*, 647 F.3d 893, 900 (9th Cir. 2011) (holding that Forest Service did not
 17 adequately represent environmental group in part because of its reluctant defense of regulation at
 18 issue). Since SB 132 took effect in January 2021, CDCR has repeatedly delayed and otherwise
 19 stonewalled requests from incarcerated TGI people seeking transfer under the statute. TGIJP
 20 Decl. ¶ 19. TGIJP's members and constituents report waiting many months, without any
 21 explanation, for hearings on their transfer requests; having their requests dropped; receiving
 22 denials of transfer without the statutorily required explanations; and experiencing persistent
 23 misgendering and gender-based harassment from CDCR staff, in direct violation of SB 132—the
 24 law CDCR now purports to defend. *Id.* Plaintiffs' complaint even attempts to weaponize
 25 CDCR's failure to fully implement SB 132 against CDCR and against SB 132's constitutionality.
 26 *See Compl.* ¶¶ 36–38. While Plaintiffs' allegations to that effect have nothing to do with SB
 27 132's constitutionality, they do demonstrate that CDCR is unwilling to implement SB 132 as
 28 written and that the Proposed Intervenors have a greater interest in the full implementation of SB

1 132 than any existing party.

2 Ms. Rose, for example, first requested a transfer in January 2021, immediately after SB
3 132 took effect. *Supra* at 7. Now, *over 15 months later*, she still has received no formal response
4 from CDCR to her transfer request. *Id.* And although Ms. Rose has expressed her preference
5 under SB 132 to be searched by female staff, CDCR staff routinely fail to honor that preference.
6 *Id.* Ms. Brown has endured a similar, months-long delay in her quest for a transfer. *Supra* at 5.
7 When she completed CDCR’s “Right Person, Right Prison” class and CDCR scheduled a hearing
8 on her transfer request, an SVSP staff member refused to take her to the hearing because he
9 refused to accept that she is a transgender woman. *Id.* To this day, Ms. Brown has not had her
10 hearing. *Id.* Ms. Brown and Ms. Rose continue to reside in a men’s facility, facing harassment
11 and fearing the same physical assaults they have experienced all too often. CDCR’s obstinacy
12 has thus caused them—and scores of others—precisely the sorts of harm that SB 132 was
13 designed to prevent. Given CDCR’s hostility to fully implementing SB 132, there is no reason to
14 believe that the agency will adequately represent the Proposed Intervenor’s interests in defending
15 that law. *Cf. April in Paris v. Becerra*, No. 2:19-cv-02471, 2020 WL 2404620, at *4 (E.D. Cal.
16 May 12, 2020) (holding that intervenors did not overcome the presumption of adequate
17 representation because “the executive agencies tasked with [the law’s] enforcement [had] not
18 shown particular incentives not to do so”).

19 ***CDCR’s Overstatement of Its Constitutional Discretion.*** The Proposed Intervenor’s will
20 argue that CDCR’s discretion in housing decisions is limited; to the extent it exercises discretion
21 in implementing SB 132, CDCR still may not violate the Proposed Intervenor’s constitutional
22 rights. Furthermore, Plaintiffs’ alleged equal protection claims should be dismissed.

23 In their motion-to-dismiss briefing, Defendants rely heavily on CDCR’s purported
24 “discretion” to implement SB 132. *See* Mem. of P. & A. in Supp. of Mot. to Dismiss, Dkt. No.
25 15-1 (“MTD”) at 13, 16–17. First, CDCR overstates the discretion it may exercise over housing
26 placements and decisions under the U.S. Constitution, arguing that it is “entitled to discretion
27 when creating and implementing housing decisions and policies” because of separation-of-powers
28 concerns and under the Due Process Clause. MTD at 16–17. But in fact, CDCR’s constitutional

1 discretion does not allow it to escape the Equal Protection Clause’s commands. *See, e.g., Greene*
 2 *v. Tilton*, No. 2:09-cv-0793, 2012 WL 691704, at *8 (E.D. Cal. Mar. 2, 2012), *report and*
 3 *recommendation adopted*, 2012 WL 1130602 (E.D. Cal. Mar. 29, 2012) (holding that deference
 4 to CDCR prison administration did not preclude equal protection gender discrimination claims).

5 As the Proposed Intervenor seek to discuss in further briefing, Plaintiffs’ claims fail not
 6 because CDCR is immune from judicial review of its housing decisions, but because it does not
 7 violate the Constitution to house transgender women in women’s facilities. In fact, as the
 8 Proposed Intervenor are requesting the right to demonstrate, the Constitution often *requires* it.

9 ***CDCR’s Narrow Reading of SB 132.*** CDCR also argues that SB 132 grants it broad
 10 statutory discretion to deny transfers for a host of reasons, and to “slow[] down implementation to
 11 consult with national experts on how best to implement” the law. MTD at 3, 18. The MTD is not
 12 the only place CDCR has made this baseless assertion. For example, in a “Frequently Asked
 13 Questions” page posted to its website after the initiation of this lawsuit, CDCR claims that it may
 14 “rescind” a decision to assign an incarcerated TGI person to that person’s preferred facility if
 15 post-transfer “management or security concerns” arise. CDCR, *Senate Bill 132 FAQs: Housing*
 16 *and Searching Incarcerated People Consistent with their Gender Identify* [sic],
 17 <https://www.cdcr.ca.gov/prea/sb-132-faqs/> (last visited May 5, 2022). Because no cisgender
 18 person would be subjected to such punishment, sending a TGI person back to a facility that does
 19 not match their gender identity against that person’s wishes is impermissible under the non-
 20 discrimination provisions of SB 132.

21 In fact, as the Proposed Intervenor will demonstrate, SB 132 places crucial limits on
 22 CDCR’s authority to deny a transfer in several key ways. It cannot deny a transfer based on any
 23 discriminatory reason, which the statute explicitly states includes anatomy and sexual orientation
 24 of a transgender person. Cal. Penal Code § 2606(c). Importantly, the statute specifically
 25 prohibits CDCR from denying a transfer based on any “factor present among other people
 26 incarcerated at the preferred type of facility,” meaning that CDCR violates SB 132 when it denies
 27 a transfer request based on conviction or carceral histories if people incarcerated in the
 28 destination facility have analogous histories. *Id.* And CDCR cannot deny *any* transfer without a

1 “specific and articulable basis” rooted in legitimate security and management concerns. *Id.*
 2 § 2606(b). And as explained above, CDCR has failed to respond promptly to most transfer
 3 requests, indicating that it believes that it has discretion to respond to requests as it sees fit—if at
 4 all. Defendants have misinterpreted SB 132’s instructions in order to grant themselves additional
 5 discretion and authority where there is none. SB 132 went into effect with full force of law on
 6 January 1, 2021, and nothing in its text permits CDCR to slow-roll its implementation.

7 Because Defendants erroneously believe that they have broad discretion to implement SB
 8 132 and such discretion is relevant to this litigation, they will not “make all of [the Proposed
 9 Intervenor’s] arguments”—far from it. *Arakaki*, 324 F.3d at 1086. The Proposed Intervenor is
 10 the only prospective party who will defend SB 132 as written and intended. Defendants
 11 therefore do not adequately represent the Proposed Intervenor’s interests.

12 ***The Proposed Intervenor’s Unique and Vital Perspective.*** TGIJP and the Proposed
 13 Individual Intervenor are uniquely situated to provide an essential perspective that the current
 14 parties in this case cannot help but neglect: the lived experiences of incarcerated TGI people and
 15 the harms they will suffer if Plaintiffs succeed. Courts have recognized the importance of
 16 intervenor’s perspectives in similar cases for precisely this reason. *Pickup v. Brown*, for example,
 17 involved a challenge to legislation banning the harmful practice of conversion therapy for
 18 LGBTQ+ youth. No. 2:12-cv-02497, 2012 WL 6024387, at *1–2 (E.D. Cal. Dec. 4, 2012). A
 19 court in this District permitted LGBTQ+ advocacy organization Equality California to intervene
 20 in defense of the legislation at issue, concluding that the group would “aid the court in resolving
 21 plaintiff’s claims fully and fairly” by providing “a helpful, alternative viewpoint”—that of
 22 LGBTQ+ adults who underwent conversion therapy. *Id.* at *4. Just so here: the Proposed
 23 Intervenor is those whom SB 132 is designed to protect and an organization that both
 24 sponsored the bill and represents the interests of its intended beneficiaries. Neither Defendants
 25 nor Plaintiffs can attest to the realities of being an incarcerated TGI person, so permitting the
 26 Proposed Intervenor to intervene would vindicate “a major premise of intervention—the
 27 protection of third parties affected by pending litigation.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d
 28 964, 971 (3d Cir. 1998). The Proposed Intervenor’s perspectives can and will aid this Court in

1 assessing SB 132’s constitutionality. And the stakes for those who benefit from SB 132 are too
 2 high to allow this lawsuit to be decided without the Proposed Individual Intervenor’s active
 3 participation.

4 While some courts have applied a presumption of adequacy when an absentee seeks to
 5 intervene on the same side as a government party, this presumption applies only where the
 6 government “is acting on behalf of a constituency that it represents,” *Arakaki*, 324 F.3d at 1086,
 7 and is “charged by law with representing the interests of the absentee.” *City of Los Angeles*, 288
 8 F.3d at 401. That is not the case here, where the government Defendants represent only the
 9 interests of state carceral officials who have worked *against* the Proposed Intervenor’s interests,
 10 and an obvious tension exists between the interests of the Proposed Intervenor and those of the
 11 agency holding them captive. Thus, the presumption of adequacy does not apply. Even if it did
 12 apply, a presumption of adequacy can be overcome in a variety of circumstances, including
 13 where, as here, proposed intervenors have special, narrow interests and where the government
 14 likely will not mount a vigorous defense. The Ninth Circuit in *Forest Conservation Council*
 15 found that the presumption can be overcome where the intervenors have “more narrow, parochial
 16 interests” than the existing party, or where “the applicant asserts a personal interest that does not
 17 belong to the general public.” *Forest Conservation Council*, 66 F.3d at 1499; *see also*
 18 *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th
 19 Cir. 1998) (affirming grant of intervention motion despite presence of state agency defendants
 20 because interests of proposed intervenors “were potentially more narrow and parochial than the
 21 interests of the public at large”); *Syngenta Seeds, Inc. v. Cnty. of Kauai*, No. 14-cv-00014, 2014
 22 WL 1631830, at *7 (D. Haw. Apr. 23, 2014) (granting Rule 24(a)(2) motion where proposed
 23 intervenors’ “interests in upholding the law [were] decidedly more palpable than [government
 24 defendant’s] generalized interest”). Likewise, courts have found that the presumption of
 25 adequacy does not apply—and that intervention is warranted—where the government party is
 26 reluctant, unwilling, or unable to vigorously defend its case. *See Citizens for Balanced Use*, 647
 27 F.3d at 895–96, 900 (permitting intervention where U.S. Forest Service defended land
 28 management plan adopted under court order while simultaneously appealing order requiring

plan’s issuance). A defendant-intervenor can also demonstrate that it is not adequately represented if the existing defendants argue for a different or narrower construction of the challenged statute than the proposed intervenor does. *See April in Paris*, 2020 WL 2404620, at *4 (holding that because defendants relied on a “strained and limited reading in an attempt to save the statute,” they did not adequately represent proposed intervenors); *see also Hecox v. Little*, 479 F. Supp. 3d 930, 955 (D. Idaho 2020) (holding that defendant’s cramped reading of statute as argued in motion-to-dismiss briefing did not adequately represent proposed intervenor’s interest). The same reasons why Defendants do not adequately represent the Proposed Intervenor’s interests, therefore, more than rebut any presumption of adequacy that might apply.

B. In the Alternative, the Court Should Permit the Proposed Intervenor’s Intervention Under Rule 24(b)

The Proposed Intervenor also satisfy the requirements of Rule 24(b), so the Court should grant their application on permissive-intervention grounds even if it concludes that they are not entitled to intervention of right. The requirements for permissive intervention under Rule 24(b) are: (1) independent grounds for jurisdiction, (2) timeliness, and (3) common issues of law and fact shared between the movant’s claim or defense and the main action. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). When an intervention motion is timely, undue delay and prejudice are less likely. *Blum v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 712 F.3d 1349, 1354 (9th Cir. 2013).

The first two requirements are easily met. The Court has federal-question jurisdiction over this case, *see* 28 U.S.C. § 1331, and the Proposed Intervenor does not raise any counterclaims or crossclaims. Where, as here, “the proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern drops away.” *Geithner*, 644 F.3d at 844; *see* 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1917 (3d ed. 2010) (“In federal-question cases there should be no problem of jurisdiction with regard to an intervening defendant[.]”). And this motion is timely—as explained above, it has been filed at

1 the earliest stage of the litigation, before any substantive rulings, and long before any discovery
2 has been conducted or a trial date set. *Supra* at 9–10.

3 On the third requirement, the Proposed Intervenor’s defense of this action shares common
4 questions of law and fact with the main action. This requirement is satisfied where parties seek
5 resolution of a common question by, for example, asking the court to interpret the same law,
6 policy, or documents. *See Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 474 (9th Cir.
7 1992). Here, Plaintiffs argue that SB 132 violates both the California and the United States
8 Constitutions. *See* Compl. ¶ 1. The Proposed Intervenor will make the opposite arguments: that
9 among Plaintiffs’ hodgepodge of constitutional claims, each is either jurisdictionally flawed or
10 legally unfounded and, rather, Plaintiffs’ proposed ban on TGI people in California’s women’s
11 prisons would violate the Proposed Intervenor’s constitutional rights. Plaintiffs’ claims and the
12 Proposed Intervenor’s defenses will thus turn on the Court’s interpretation of the same law and
13 finding of facts related to the law’s implementation.

14 Again, intervention at this early stage would create neither undue delay nor prejudice.
15 *Supra* at 9–10. On the contrary, intervention would *assist* the Court because the Proposed
16 Intervenor can offer the Court a unique and crucial perspective currently unrepresented by the
17 existing parties. *See Sagebrush*, 713 F.2d at 528. Defendants’ perspective is limited to their
18 status as government entities and agents, so their defense of SB 132 necessarily lacks the
19 perspective of the incarcerated TGI people who directly benefit from the law. TGIJP has
20 represented the interests of the TGI community for years, and the Proposed Individual Intervenor
21 have been subjected to years of harassment and violence because of their gender identity and
22 transgender status, often finding themselves at odds with Defendants while advocating for their
23 right to be housed in accordance with their gender identity and safety concerns. None of the
24 existing parties can attest to these lived experiences in the same way that the Proposed
25 Intervenor can.

26 The Proposed Intervenor’s motion satisfies the permissive-intervention requirements,
27 raises no issue of prejudice or delay, and would permit the Court to hear a critical perspective that
28 is currently absent from the case. They should be permitted to intervene.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should grant the Proposed Intervenor's motion.

3
4 Dated: May 9, 2022

Respectfully Submitted,

5
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